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Supreme Court, U.S.
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No. 07-

IN THE

Supreme Court of the United States

RICHARD HATCH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the trial court violate the Sixth Amendment when it acts as a goalie for the Government, preventing all potential scoring of exculpatory points, by running interference with cross examination of key prosecution witnesses, keeping the accused from telling the jury his or her side of the story, and refusing testimony by the key defense witness?

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OPINION BELOW

The published decision of the Court of Appeals, *United States v. Hatch*, Case No. 05-98T (D.R.I. Jan. 26, 2006), is reproduced in Appendix A.

STATEMENT OF THE BASIS FOR JURISDICTION

The Court of Appeals for the First Circuit entered its opinion on February 1, 2008, and denied a Petition for Rehearing on February 27, 2008 (Appendix B).

This Court has jurisdiction to review on a writ of certiorari the case in the Court of Appeals for the First Circuit pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

26 U.S.C. § 7201:

Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. § 7206(1):

Fraud and false statements

Any person who —

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter

. . .

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

STATEMENT OF THE CASE

Richard Hatch (Defendant or Hatch) was convicted on three counts of a ten-count indictment in the United States District Court for the District of Rhode Island on January 26, 2006. The three counts on which he was convicted charged tax fraud and evasion. Hatch maintains, and argued on appeal to the Court of Appeals for the First Circuit, that the District Court violated his Sixth Amendment rights in several facets on the three tax counts.

Hatch won a one-million-dollar, month-long, off-shore contest in the most popular televised reality show in history—the first season of the CBS television show called "Survivor" in 2000. Mark Burnett (Burnett), the President and Executive Producer of the corporation Survivor Entertainment Group (SEG), conceived of the proposed reality television series and was involved in a wholly hands-on way with the 2000 show. The Survivor show's concept was that 16 strangers are placed on an island to engage in a contest of "survival," and they "eliminate" each other until just one is left. That "survivor" wins $1 million.

Hatch received two checks from SEG—one for $1,000,000 for winning the contest, and one for $10,000 for appearing on a subsequent TV show. Both times, SEG sent accompanying forms with the wrong Social Security number on them, and each time Hatch corrected them to make certain the earnings would be properly credited. Upon receiving the $1,010,000, and expecting that by law there could be taxes assessed on the offshore winnings, Hatch opened a financial account with Morgan

Stanley, and deposited $350,000, to ensure that he would be able to cover any tax liability.[1]

Before he filed his 2000 tax return, however, Hatch came to believe—based on bad tax advice, incomplete notices from the Government, and a commitment on the island while filming Survivor—that he did not in fact owe taxes on the $1,010,000 because his taxes had been paid by SEG or a related entity.

Burnett's promise. While competing on the island for food, Hatch had an advantage in that he could fish, and fish well. He took an early lead. In order to manipulate the outcome of the show so that Hatch would lose—he had been profiled by the show's promoters as the evil gay villain—the producers started to aid select competitors by smuggling them food. Hatch confronted Burnett about his discovery that the "contest" was no contest at all, that it was being fixed. The men talked, and Burnett left Hatch with an understanding on two points. The cheating was over; it would be a clean contest from that point on. And, in exchange for his silence about the manipulation, if Hatch won the game SEG would pay his taxes.

This conversation would later form the basis for Hatch's belief that his taxes were in fact paid by SEG. This conversation was never made known to the jury because the District Court found that anything that happened *on the island* was irrelevant, even to the ultimate question of whether Hatch willfully evaded taxes.

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1. Hatch's money, along with many other investors' money, was churned out of existence. While Hatch did not sue Morgan Stanley, many others did.

The IRS notices. In July 2002, before his 2000 return had been filed, Hatch received a "Request for Your Tax Return" from the Internal Revenue Service (IRS). The notice stated that the IRS expected Hatch to report two unreported items of income from 2000—$135,182 in non-employee compensation, and $11,500 in rents and royalties. Despite this specificity, the notice said nothing about the Survivor winnings. In September 2002, Hatch received a *second* IRS request for reporting on the same items of income and again with no mention of Survivor winnings. Hatch became convinced that Burnett and/or SEG and/or CBS had actually honored Burnett's promise and paid his taxes on his winnings.

The incompetent tax preparer. There was another key factor that convinced Hatch that he was not legally obligated to report or pay taxes on the winnings. Jodi L. Rodrigues-Wallis (Rodrigues-Wallis), the accountant who prepared all three tax returns on which Hatch was convicted, told Hatch that if the tax returns he filed turned out to be wrong, she could legally amend the incorrect return. Rodrigues-Wallis' and Hatch's families had known one another for generations, which caused Hatch to trust her. When Hatch showed Rodrigues-Wallis the Government notices, she opined that it was "weird" that they suggested that Hatch did not need to report or pay taxes on the winnings—but she did not unequivocally advise him of his obligation, regardless, to report the Survivor winnings. She did not tell him, as a proficient and ethical tax accountant would, that he should report the winnings and then request a refund based on his belief that the taxes had already been paid. Instead, Rodrigues-Wallis encouraged Hatch to search for documentation to support his belief that the taxes had been paid. And, she prepared two 2000 individual tax returns: one, which she instructed

Hatch to file but which she admitted did not include $135,182 in non-employee compensation and $11,500 in rents and royalties specifically listed on the IRS notices, and was incorrect in many other respects; and, another, which she prepared but would not sign, that did not include the $1,010,000. Rodrigues-Wallis manipulated the computer program to delete her name so Hatch could file it; but she had him sign a CYA letter. The invalidity of Rodrigues-Wallis' legal opinions was ruled irrelevant and her opinions unimpeachable.

Hatch filed the Rodrigues-Wallis return that did not include the $1,010,000 in Survivor winnings, but mirrored the figures the IRS instructed him to report. Hatch filed this return because he believed there was documentation somewhere confirming that his taxes on the Survivor winnings had already been paid.

On September 8, 2005, Hatch was indicted on ten counts, including the three tax counts that were the subject of appeal, and seven counts charging conduct ranging from wire fraud, mail fraud, and bank fraud, to charity fraud. Hatch's failure to file a 2000 personal tax return that included the Survivor winnings was the basis for Count One.

Counts 2 and 3 were based on two corporate tax returns that Rodrigues-Wallis prepared. According to the indictment, Hatch failed to declare certain income on these returns. The returns also were erroneous due to incompetent tax advice. For 2001, Rodrigues-Wallis prepared both a personal tax return and a subchapter S corporation return for Hatch's corporation, Tri-Whale Enterprises. Prepared competently, the subchapter S

corporation return could have saved Hatch money. The way it was prepared increased his net liability on the reported items, excluded liability for unreported items, and screamed out for an audit. Rodrigues-Wallis also prepared Hatch's 2002 and 2003 returns, after notification that the Government was dissatisfied with Hatch's 2000 tax return, and evidently after Rodrigues-Wallis started cooperating with the Government. Still, Rodrigues-Wallis' incompetence and bias were ruled irrelevant by the District Court.

Trial before the Honorable Ernest C. Torres of the District Court of Rhode Island and a jury began on January 10, 2006 and ended on January 25, 2006. On January 26, 2006, the jury returned a verdict of guilty on the tax counts and not guilty on Counts Four through Ten. The District Court had federal jurisdiction pursuant to 26 U.S.C. § 7402, which confers jurisdiction in the federal district courts over the internal revenue laws.

Hatch was convicted on Count One, 26 U.S.C. § 7201, personal income tax return calendar year 2000; Count Two, 26 U.S.C. § 7201, personal income tax return calendar year 2001; and Count Three, 26 U.S.C. § 7206(1), subchapter S corporation income tax return calendar year 2001. The District Court remanded Hatch into custody on the same day. Hatch was sentenced on May 16, 2006 to a term of imprisonment of 51 months.[2]

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2. Hatch's 51-month sentence exceeds by two months the combined tax sentences of the following prominent convicted citizens: (1) Leona Helmsley, New York billionaire, 18 months; (Cont'd)

The prison bureau disagreed with the District Court's finding that Hatch was a flight risk, and after six months of maximum security incarceration, removed him to a minimum security prison in West Virginia where he is serving his sentence.

At trial, Hatch sought to introduce opinions by his taxation expert, Daniel J. Urso (Urso). Urso's opinions about the competence of Hatch's tax advisors—Rodrigues-Wallis and Richard A. Plotkin (Plotkin), the first accountant Hatch hired to prepare his 2000 individual tax return—were ruled by the District Court to be irrelevant. Similarly, the District Court allowed the Government to introduce considerable information both through qualified experts and the testimony of non-experts on such tax issue as what is a Form 1099?; whether Hatch's 1099s were properly prepared; whether the 2001 subchapter S return was properly prepared; and, whether Hatch might have had good reason ultimately to take matters into his own hands as to his 2000 tax liability rather than trust his tax preparers—but did not allow defense expert rebuttal testimony or cross-examination on these issues.

Hatch appealed to the Court of Appeals for the First Circuit, which affirmed on all three counts. 514 F.3d 145. Hatch's Petition for Rehearing was denied on February 27, 2008.

(Cont'd)

(2) Frank Nitti, Chicago crime boss, 18 months; (3) baseball sensations, Pete Rose, five months; and Daryl Strawberry, probation; (4) Vice President Spiro Agnew, probation; and (5) tax protestor and alleged killer, Gordon Wendell Kahl, eight months. *(Sentences on www.wikipedia.org).*

REASONS FOR GRANTING THE PETITION

I. Introduction

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ." U.S. Const. amend. VI. What is at issue here is the Sixth Amendment in its several facets.

In a system of justice run by people, there are no guarantees of perfection. No matter how well intentioned, no matter how adequately administered, innocent people will be convicted; guilty people will be exculpated. The system can only aspire to get it right. At its best, every accused has the opportunity to confront not just the witnesses, but the Government's entire case.

The Sixth Amendment leaves the ultimate question of guilt or innocence in the hands of the jury. The ultimate tool to test the truth of witnesses is confrontation. Confrontation is accomplished by (1) cross-examination of hostile witness; (2) impeachment of the adversary; and (3) refutation with contradictory testimony.

"The jurymen of England were originally nothing but witnesses." William Forsyth, *History of Trial by Jury* 14 (1852, reprinted in 2004). Long before the Magna Carta, ". . . original and proper function[s] of the English jury [were] to inform the court . . . of certain facts of which they had peculiar means of knowledge . . ." *Id.* at 38. Jurors were "to be absolutely free from any professional bias or prejudice." *Id.* at 7.

And, "[t]he jurors were merely witnesses deposing to facts with which they were acquainted." *Id.* at 92. Over the course of time, jurors stopped being witnesses to report facts and came to judge the witnesses and determine facts. Thus, the trial evolved into a test of witnesses being confronted in front of the fact deciders—the jury.

What happens when jurors are not trusted with all of the pertinent facts or allowed to judge the confrontation of witnesses?

In Hatch's trial on the three tax counts, elements of the Sixth Amendment were violated. The chief witnesses were allowed to say things the trial court knew—and even a novice tax preparer would know—were not true, but Hatch was not allowed to challenge or correct them. Hatch was prevented from defending himself against the Government's characterization of him as a willful tax violator. And, the trial court refused to allow Hatch's tax expert to testify in refutation of the Government witnesses' false testimony.

False statements, left unchallenged, precluded a finding of not guilty. In a contest to show who—Hatch or Rodrigues-Wallis—caused false tax returns to be filed, the Court ruled that the tax preparer was beyond reproach.

Hatch was charged with ten counts. He was permitted to share with the jury his explanation for the alleged violations charged in seven counts. Equally importantly, he was allowed to conclude relevant cross-examination and rebuttal of Government witnesses on

those counts. He was acquitted on all seven of those counts. Conversely, Hatch was not permitted to share his defense on the remaining three counts. Equally importantly, he was not allowed to conduct relevant cross-examination and rebuttal of Government witnesses on the tax fraud counts. He was convicted on all three, a decision that was affirmed on appeal. 514 F.3d 145.

Recently, in *United States v. Moran*, 493 F.3d 1002 (9th Cir. 2007), the Ninth Circuit Court of Appeals reversed a case in which the defendants were precluded from explaining—as Hatch was precluded—what they relied on to form their belief about their tax responsibilities. "Mrs. Moran's principal defense was that she held a good faith belief that the [tax-reduction] programs in which she participated were legal." *Id.* at 1011. The court of appeals reversed. *Id.* at 1015.

II. Curtailed Cross-Examination Eviscerated Hatch's Sixth Amendment Right Of Confrontation And Effective Counsel.

While early lawyers, shortly after the adoption of the United States Constitution, traced the right to cross-examination back to the Magna Carta, scholars have uncovered much earlier evidence. James B. Thayer, "The Jury and its Development," 5 Harv. L. Rev. 249 (1892). *See also Duncan v. La.*, 391 U.S. 145, 151 n.16 (1968). Indeed, cross-examination as a method for truth-finding has its roots in ancient Greece.

Socrates, charged with corrupting Athenian youth, is credited with a dramatic and effective cross-examination, 2,500 years ago, as expressed through the pen of his "court reporter" Plato.

> With respect, then, to the charges which my first accusers have alleged against me, let this be a sufficient apology to you. To Melitus, that good and patriotic man, as he says, and to my later accusers, I will next endeavor to give an answer; and here, again, as there are different accusers, let us take up their deposition. It is pretty much as follows: "Socrates," it says, "acts unjustly in corrupting the youth, and in not believing in those gods in whom the city believes, but in other strange divinities." Such is the accusation; let us examine each particular of it. It says that I act unjustly in corrupting the youth. But I, O Athenians! say that Melitus acts unjustly, because he jests on serious subjects, rashly putting men upon trial, under pretense of being zealous and solicitous about things in which he never at any time took any concern. But that this is the case I will endeavor to prove to you.
>
> Come, then, Melitus, tell me, do you not consider it of the greatest importance that the youth should be made as virtuous as possible?
>
> *Mel.* I do.

Socr. Well, now, tell the judges who it is that makes them better, for it is evident that you know, since it concerns you so much; for, having detected me in corrupting them, as you say, you have cited me here, and accused me: come, then, say, and inform the judges who it is that makes them better . . . But tell me, friend, who makes them better?

Mel. The laws.

Socr. I do not ask this, most excellent sir, but what man, who surely must first know this very thing, the laws?

Mel. These, Socrates, the judges.

Socr. How say you, Melitus? Are these able to instruct the youth, and make them better?

Mel. Certainly.

Socr. Whether all, or some of them, and others not?

Mel. All.

Socr. You say well, by Juno! and have found a great abundance of those that confer benefit. But what further? Can these hearers make them better, or not?

Mel. They, too, can.

Socr. And what of the senators?

Mel. The senators, also.

Socr. But, Melitus, do those who attend the public assemblies corrupt the younger men? or do they all make them better?

Mel. They too.

Socr. All the Athenians, therefore, as it seems, make them honorable and good, except me; but I alone corrupt them. Do you say so?

Mel. I do assert this very thing.

Socr. You charge me with great ill-fortune. But answer me: does it appear to you to be the same, with respect to horses? Do all men make them better, and is there only some one that spoils them? or does quite the contrary of this take place? Is there some one person who can make them better, or very few; that is, the trainers? But if the generality of men should meddle with and make use of horses, do they spoil them? Is not this the case, Melitus, both with respect to horses and all other animals? It certainly is so, whether you and Anytus deny it or not. For it would be a great good-fortune for the youth if only one person corrupted, and the rest benefited them. However, Melitus, you have sufficiently shown that you never bestowed any care upon youth; and you clearly evince your own

> negligence, in that you have never paid any attention to the things with respect to which you accuse me.

Project Gutenberg's *Apology, Crito, and Phaedo of Socrates*, by Plato (Oct. 12, 2004.) Thus, Socrates, through cross-examination, elicited an opinion from his accuser, Melitus, that while insufficient to win over a majority of his 400 or so jurors, has in fact won over practically every thinking mind who has read *The Apology* over the last couple of millennia. In the appeal court of thinking historians, philosophers, students, and teachers, Socrates won his argument, albeit not in time to save his life.

Move forward through time to the United States in 1989 to the less-historical cross-examination of an IRS officer. "Buford's attorney, in a very able cross-examination of Boatright, elicited testimony that the Certificates of Assessments were hand prepared, using information taken from the IMF. When asked whether a mistake might have occurred, she said she had never seen one." *United States v. Buford*, 889 F.2d 1406, 1408 (5th Cir. 1989). Judge Gee, one of the legal giants of his time, wrote the decision reversing the ridiculous position of IRS agent Boatright, which got more ridiculous as the testimony developed.

Melitus threw all of the problems of Athenian youth and rebellion on the shoulders of Socrates, and Boatright cast the theory of IRS infallibility onto the shoulders of Buford, a negligent tax preparer. In the present case, Hatch faced an uphill battle to explain why he filed an erroneous tax return. His explanation was twofold:

(1) his own mistaken understanding of the obligations and agreements of others; and (2) his reliance on what he believed to be the integrity and competence of his certified public accountant (CPA) tax preparer.

The District Court's limitation of cross-examination of Rodrigues-Wallis, Hatch's explanation for why he came to think his taxes had been paid, and examination of Urso comprised a grand denial of Hatch's Sixth Amendment rights by the District Court.

III. Truncated Cross-Examination

"The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution 'to be confronted with the witnesses against him,' [which] 'means more than being allowed to confront the witness physically.'" *Del. v. Van Arsdall*, 475 U.S. 673, 679 (1986) (quoting *Pointer v. Tex.*, 380 U.S. 400 (1965); *Davis v. Alaska*, 415 U.S. 308, 315 (1974)). Rather, "'the main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination*.'" *Id.* at 679 (quoting *Davis*, 415 U.S. at 315-16). "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Md. v. Craig*, 497 U.S. 836, 845 (1990). The Confrontation Clause requires the witness adverse to the defendant "to submit to cross-examination, the 'greatest legal engine ever invented for the discovery of truth.'" *Id.* at 846.

Reasonable limits to the right to cross-examination are allowed to be imposed by the trial court *only* when it is concerned about "harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* But when "the trial court prohibited *all* inquiry into the possibility that [the witness] would be biased," on an issue "that a jury might reasonably have found furnished the witness a motive for favoring the prosecution in his testimony, the court's ruling violated . . . the Confrontation Clause." *Id.* (holding that the trial court's "cutting off all questioning" as to a particular event violated the Confrontation Clause). The Sixth Amendment right to confrontation requires the chance to really "delve into the witness' story to test the witness' perceptions and memory [and] to impeach, *i.e.*, discredit, the witness." *Davis*, 415 U.S. at 316. *Accord Olden v. Ky.*, 488 U.S. 227, 231 (1988) (holding that court of appeals "failed to accord proper weight to petitioner's Sixth Amendment right 'to be confronted with the witnesses against him,'" which "includes the right to conduct reasonable cross-examination; "the limitation here"—made "without acknowledging the significance of, or even adverting to, petitioner's constitutional right to confrontation" by cross-examination—"was beyond reason").

A defendant need not show prejudice to the outcome of the trial by the trial court's refusal to allow cross-examination that would show bias of the witness.

> We think a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-

> examination designed to show a prototypical form of bias on the part of the witness, and thereby "to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.

Van Arsdall, 475 U.S. at 680 (quoting *Davis*, 415 U.S. at 318). The appropriate inquiry is whether, if "the damaging potential of the cross-examination" had been fully realized, the error nonetheless "was harmless beyond a reasonable doubt." *Id.* at 684.

All of the evidence to show Hatch's supposed willfulness to evade taxes and commit fraud upon the Government came down to several tax returns. All of the tax returns he was convicted of filing unlawfully were prepared by one CPA, Rodrigues-Wallis, in one year. She was the Government's key witness.

But Rodrigues-Wallis also was key to Hatch's defense. Hatch sought to show that it was her incompetence, not his knowing evasion, that caused him to file erroneous tax returns. Hatch thus was entitled to test Rodrigues-Wallis' perceptions, truthfulness, competence, experience, motives, and potential bias, through the rigors of cross-examination.

As in *Delaware v. Van Arsdall*, Hatch's counsel likewise was cut short in his cross-examination of the Government's key witness, Rodrigues-Wallis. When defense counsel tried to cross-examine Rodrigues-Wallis on the two 2000 individual tax returns and the 2001 subchapter S return that she prepared and on which

Hatch was indicted, the District Court repeatedly sustained objections, ruling that Rodrigues-Wallis' competence, or lack thereof, was not relevant to Hatch's defense that he did not willfully evade taxes. (The District Court's rulings on objections were seldom explained, but relevancy was the only basis stated when explanations were provided.) The Court of Appeals placed its stamp of approval on that decision, essentially concluding that the precluded cross-examination questions were not extensive or relevant and so were properly kept out.

> Here, the district court's limitations on cross-examination in this nine-day trial were thoughtful and far from being excessive. Most of the defense's numerous questions asked on cross-examination were uninterrupted. The relatively few exclusions were largely of questions that could reasonably be thought to be repetitive, improper, incoherent, or confusing to the jury, or else dealt with matters of seemingly scant relevance to the charges upon which Hatch was being tried.

Id. at 158. Was this a just enforcement of the Sixth Amendment? If the trial court "mostly" gets it right, if its exclusionary rulings are few—never mind the assault to constitutional rights—is the error harmless? Plato and Judge Gee, two great observers of the law in their respective days, would roll over in their graves to find that Hatch's attempt "to test the witness' perceptions and memory [and] to impeach, *i.e.*, discredit, the witness," *Davis*, 415 U.S. at 316, was undeserving of entry into the record.

Defendant's cross-examination on these issues was curtailed, the importance of which cannot be overstated. *See Olden*, 488 U.S. at 233 (where the witness' testimony was central to the prosecution's otherwise thin case, the jury's verdicts could not be squared with the state's case, and the witness' impartiality would have been impugned by revelation of critical facts on cross-examination, the court's restriction on the petitioner's right to confrontation was not harmless). *Accord Holmes v. S.C.*, 126 S. Ct. 1727 (2006) (the trial court violated the defendant's right to a meaningful opportunity to present complete defense when it excluded evidence of another person's guilt based on its one-sided assessment of the strength of that evidence).

True, the cross-examination was not eliminated altogether—it just was cut short every time Hatch's lawyer tried to test Rodrigues-Wallis' knowledge, ability, and credibility. Similarly, if Socrates' cross-examination of Melitus ended before the last question, Socrates, instead of showing himself to be one of the great geniuses of logic and rhetoric of all time, appears a doddering old man without a point.

Evidence of Rodrigues-Wallis' incompetence was relevant to show that crucial items were left off the 2001 returns because of her negligence, *not Hatch's willful plan to evade his tax obligations*. The purpose of the Confrontation Clause is to provide information for the jury to properly critique the witnesses, particularly the key witness. The District Court's refusal was an abuse of discretion. It violated Hatch's Sixth Amendment right to cross-examination of witnesses.

III. The Right To Present A Defense

This Court has long recognized that "[t]he Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." *Faretta v. Cal.*, 422 U.S. 806, 819 (1975). Although in *Faretta* the Court addressed the narrow question of the right of the defendant to self-representation, its reasoning was founded on "the structure and history of the constitutional text" *id.* at 819 n.15, the "language and spirit" *id.* at 820, of the Sixth Amendment when it concluded, "[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails" *id.* at 819-20.

The *Faretta* Court looked also to the advent of representation by counsel in the 16th and 17th centuries, during which those accused of serious crimes were compelled to represent themselves. *Id.* at 823. The accused "stood alone, with neither counsel nor the benefit of other rights—to notice, confrontation, and compulsory process—that we now associate with a genuinely fair adversary proceeding." *Id.* The trial was nothing more than "a 'long argument between the prisoner and the counsel for the Crown.'" *Id.* at 823-24 (citation omitted). The Court recognized, though, that "[a]s harsh as this now seems, *at least 'the prisoner was allowed to make what statements he liked.'*" *Id.* at 824 (citation omitted and emphasis added).

This rule applies equally in modern criminal tax cases. As the Court of Appeals for the Ninth Circuit held in *United States v. Powell*, 955 F.2d 1206 (9th Cir. 1991),

the trial court *must* allow the defendant to testify as to the reason behind his or her good-faith belief that taxes are not owing, or the court violates the defendant's Sixth Amendment rights.

> The Supreme Court in *Cheek* held that "forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision." . . . [The court] ordinarily cannot exclude evidence relevant to the jury's determination of what a defendant *thought the law was* in . . . cases where willfulness is an element of the offense.

Id. at 1214 (quoting *Cheek v. United States*, 498 U.S. 192, 203 (1991)). In *Cheek*, this Court held:

> Willfulness . . . requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of the this duty, and that he *voluntarily and intentionally* violated that duty.
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> . . .
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> It was therefore error to instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or to pay income taxes and that wages are not taxable income, as incredible as such misunderstandings of and beliefs about the law might be.

498 U.S. at 201, 203 (emphasis added). Under *Cheek*, the law is that "forbidding the jury to consider evidence that